

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JESSE ECHOLS

PLAINTIFF

V.

CIVIL ACTION NO.4:06CV26-GHD-JAD

MARVIN MILLER, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On October 3, 2006, plaintiff, an MDOC inmate, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

He alleges excessive use of force against the defendant Marvin Miller and has states a claim against this defendant. However he has also sued John Rogers, the warden, Lawrence Kelly, the Superintendent at Parchman and Christopher Epps, the Commissioner of the Mississippi Department of Corrections. These men were included solely because of their involvement in the administrative remedy program. They have no potential liability for their handling of the grievance in this case. *Bradford v. Kuykendall*, 2005 WL 1521016, 5(E. D. Tex.) citing *Geiger v. Gowers*, 404 F. 3d 371, 374(5th Cir. 2005). Additionally, in a § 1983 action the employers and supervisors cannot be held liable for the actions of prison employees under a respondeat superior theory of liability. *Monell v. Department of Social Services*, 436, U.S. 658, 98 S. Ct. 2018, 56 L Ed. 611(1978).

The undersigned recommends that the defendants, John Rogers, Lawrence Kelly and Christopher Epps be dismissed with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file

written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 5th day of October, 2006.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE